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SEP 24

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FILED
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DEPUTY

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT
RAVALLI COUNTY

STATE OF MONTANA,)	Cause No.: DC-11-117
)	
Plaintiff,)	
)	
vs.)	STATE'S MOTION IN LIMINE TO
)	EXCLUDE TESTIMONY OF ROBERTA
HARRIS HIMES,)	CROSS GUNS AND BRIEF IN SUPPORT
)	
Defendant.)	

The State of Montana, by and through counsel, hereby moves the Court to preclude the Defendant from calling Roberta Cross Guns to testify at trial.

FACTS

The Defendant deposed Roberta Cross Guns, a former attorney at the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI). Ms. Cross Guns voluntarily retired from the CSI in January 2012, several months after this case was filed. Depo. Cross Guns, 9:4-5 (Aug. 14, 2012). During her deposition, Ms. Cross Guns admitted she has no personal knowledge about the State's case against the Defendant:

Q. How about with regard to my client, Harris Himes? Has Ms. Egan made any comments about Mr. Himes' religious beliefs?

1 A. **I don't really know anything about this case.** I sort of remember it, you know,
2 coming across the table, **but I really don't – I had no involvement in the case**
3 **so I don't know.**

4 [...]

5 A. So he [former employee Alan Ludwig] explained to me about the Harris Himes
6 case, **because I honestly don't know anything about it.**

7 Depo. Cross Guns, 54:15-22; 88:21-22 (Attached as Exhibit A) (Emphasis Added). These were
8 the only questions asked of Ms. Cross Guns at her deposition relevant to the charges against the
9 Defendant. On both occasions, she made clear that she knew nothing about the case at issue.

10 ARGUMENT

11 The purpose of a motion in limine is to “prevent the introduction of evidence which is
12 irrelevant, immaterial, or unfairly prejudicial.” *Hulse v. Mont. Dept. of Justice*, 1998 MT 108, ¶
13 15, 289 Mont. 1, 961, P.2d 75. In Montana, “[t]he authority to grant or deny a motion in limine
14 rests in the inherent power of the court to admit or exclude evidence and to take such precautions
15 as are necessary to afford a fair trial for all parties.” *State v. Vandersloot*, 2003 MT 179, ¶ 8, 316
16 Mont. 405, 73 P.3d 174.

17 I. **THE COURT SHOULD EXCLUDE MS. CROSS GUNS FROM TESTIFYING** 18 **BECAUSE SHE HAS NO PERSONAL KNOWLEDGE OF THIS CASE AS** 19 **REQUIRED BY MONT. R. EVID 602.**

20 Ms. Cross Guns did not work on this case. She admitted she does not know anything
21 substantive about the charges against the Defendant. As a result, she lacks personal knowledge
22 and her testimony is entirely irrelevant.

23 The fundamental rule is that a lay witness must have personal knowledge in order to
24 testify:

25 **Rule 602. Lack of personal knowledge.**

A witness may not testify as to a matter unless evidence is introduced sufficient to
support a finding that the witness has personal knowledge of the matter. Evidence to
prove personal knowledge may, but need not, consist of the witness' own testimony.

1 This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert
2 witnesses.

3 The Defendant has not specifically identified Ms. Cross Guns as a lay witness. Def.'s
4 Preliminary Witness List (Jul. 30, 2012). To that end, it appears that Ms. Cross Guns will not be
5 called as an expert witness. *Id.* Thus, her testimony is limited to her personal knowledge of this
6 case – which she admitted she does not have. A lay witness with no personal knowledge is
7 strictly prohibited from testifying under Rule 602.

8 CONCLUSION

9 For the foregoing reasons, the State respectfully requests that the Court grant the State's
10 motion in limine to exclude the testimony of Roberta Cross Guns.

11
12 DATED this 19th day of September, 2012.

13
14 By: 

15 JESSE LASLOVICH

16 BRETT O'NEIL

17 Special Deputy Ravalli County Attorneys

1 The two criminal cases -- one victim was
2 an Alzheimer's victim, and his attorney asked for
3 another medical review, and the family refused to
4 have that done, so we dismissed that criminal
5 action. But she knew he was a pastor at a church in
6 the Troy area, and she made lots of denigrating
7 comments about him.

8 And we'd show up, and he'd have --
9 supporters from his church would be there, and she'd
10 talk about how they looked like -- oh, my gosh --
11 like they were Hutterite types. You know, they were
12 very conservatively dressed and conservative
13 haircuts, and they had beards. But she would talk
14 about -- you know, make fun of them, essentially.

15 Q. How about with regard to my client,
16 Harris Himes? Has Ms. Egan made any comments about
17 Mr. Himes' religious beliefs?

18 A. Not in my presence, but I -- I don't
19 really know anything about this case. I sort of
20 remember it, you know, coming across the table, but
21 I really don't -- I had no involvement in the case,
22 so I don't know.

23 Q. Did you hear from other people that
24 Ms. Egan has made comments about Mr. Himes?

25 A. Oh, sure.

Exhibit A

Roberta Cross Guns

1 Q. And you just spoke with him once?

2 A. I talk to Alan almost every day.

3 Q. Yeah. My question, Ms. Cross Guns, is
4 with regard to the case. Did you speak with --

5 A. Well --

6 Q. Okay.

7 A. -- probably just once, yeah.

8 Q. And what did you talk about with him?

9 A. Well, we went riding, and when we got
10 done, he said, "Let's go get something to eat," so
11 we did. He said, "I need to tell you something."
12 He said, "You might not want to be my friend
13 anymore."

14 And I said, "What happened?"

15 So he tells me about this deposition that
16 he had been involved in a week prior I believe it
17 was. I'm not 100 percent sure on that, but sometime
18 before I talked to him. And I'm like -- he goes,
19 "And your name came up."

20 "Well, what was it about?"

21 So he explained to me about the Harris
22 Himes case, because I honestly don't know anything
23 about it. And he said, "There's a pleading online.
24 You can look at it. There's" -- you know, "This is
25 basically what my deposition was about, that there

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 19th

day of September, 2012, by US mail, first-class postage paid, to the following:

Hon. Loren Tucker
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A handwritten signature in cursive script, appearing to read "L. H. Smith", is written over a horizontal line.